

Remarks

In the non-final Office Action dated June 24, 2009, the following new grounds of rejections are indicated: claims 5, 7-9 and 32 stand rejected under 35 U.S.C. § 102(e) over the Yu reference (U.S. Patent Pub. 2003/0061287); claims 1, 3-4, 6, 10-14, 16-20, 25, 27-29, and 33 stand rejected under 35 U.S.C. § 103(a) over the '287 reference in view of Carpenter (U.S. Patent Pub. 2002/0059429); claims 2, 15, 21-24, 26 and 34 stand rejected under 35 U.S.C. § 103(a) over the '287 and '429 references and further in view of official notice; and claims 30-31 stand rejected under 35 U.S.C. § 103(a) over the '287 and '429 references further in view of Ritchie (U.S. Patent Pub. 2002/0194319).

Applicant respectfully traverses the § 102(e) and § 103(a) rejections because the '287 reference fails to provide correspondence to multiple aspects of the claimed invention, including those directed to verifying an error report (*e.g.*, determining the validity of the report) and modify the trustworthy-measure of at least one node responsive to verification of the error report. The Office Action erroneously equates deleting reported errors that are older than a predetermined amount of time from the error reports for each node that are maintained by server 12 with verifying the validity of errors reported by client nodes 14. *See, e.g.*, Fig. 3E and paragraph 0048. The '287 reference does not verify the validity of errors in the download results that are reported to server 12 by the client nodes 14. Instead, the '287 reference simply adds any errors found in the downloaded results reported by the receiving node to the appropriate error report. Thus, the '287 reference does not perform any verification of the validity of errors reported by the client nodes 14.

Moreover, as the '287 reference fails to teach verifying error reports, the '287 reference further fails to teach various claimed aspects directed to the manner in which verification of the error reports is performed (*see, e.g.*, claims 3, 8, 11, 14-19, 21-23, 26-27 and 32-34). In this context, the cited portions of the '287 reference are wholly unrelated to various aspects of the claimed invention, including those directed to determining the validity of individual error reports from reporting nodes that identify erroneous transmissions (*see, e.g.*, claims 5-19, 21-29 and 32-34), and to those directed to using reliability characteristics of the reporting nodes (*see, e.g.*, claims 16-18, 23-24 and 27). Referring to claim 12 by way of example, the claimed degrading of a trustworthy-

measure is “associated with the reporting node” that receives an information file from a source node and that generates an error report based upon that file. Accordingly, the cited source-node based assessment and elimination in the ‘287 reference does not correspond to the claimed approach to grading reporting nodes and related error report validation. For instance, paragraphs 0020 and 0025 of the ‘287 reference, cited in connection with the rejection of claim 12, are not concerned with determining a trustworthy characteristic of a reporting node (*e.g.*, the client nodes 14 of the ‘287 reference, which report errors in the downloaded results to server 12), and do not mention anything about verifying the validity of reported errors. As another example, the portions of the ‘287 reference cited with the rejections of claims 17 and 18 similarly fail to provide specific correspondence to limitations directed to assessing the reliability of a reporting node in “determining the validity of the report.” That is, the alleged node reliability determination relative to cited figures 3C and 3E (and at paragraph 0009) is made based upon the ability of a node to deliver content, and has no bearing upon an error report by a receiving node or determining the validity of such a report.

In view of the above, the § 102(e) and § 103(a) rejections are improper and Applicant requests that they be withdrawn.

Applicant further traverses the § 103 rejections because the ‘287 reference teaches away from the proposed combination of references. Consistent with the recent Supreme Court decision, M.P.E.P. § 2143.01 explains the long-standing principle that a §103 rejection cannot be maintained when the asserted modification undermines either the operation or the purpose of the main (‘287) reference - the rationale being that the prior art teaches away from such a modification. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007) (“[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious.”).

In this instance, the ‘287 reference eliminates nodes based upon data transmission errors. Specifically, the ‘287 reference addresses data communication errors involving eliminating unreliable nodes and reporting successful downloads (*see, e.g.*, step 138 in Fig. 3C, and paragraph 0042). The described reliability relates to a node’s ability to transmit a file as relative to speed and connectivity (*see, e.g.*, paragraph 0007). Based

upon each (source) node's ability to transmit files, source nodes are eliminated to promote the speed at which data can be transmitted across multiple nodes, as consistent with the '287 reference's stated purpose (*see, e.g.*, paragraphs 0008-0010). To facilitate this purpose, successful downloads are reported (item 152 of FIG. 3D), and a pass/fail approach is used to eliminate source nodes (*see, e.g.*, paragraph 0045). Accordingly, the '287 reference teaches away from downgrading the trustworthy-measure of a source node in response to reported errors and providing the downgraded trustworthy-measure for evaluating subsequent use of the source node, instead of eliminating (*e.g.*, black listing) source nodes with reported errors as taught by the '287 reference. Accordingly, the § 103(a) rejections are improper and Applicant requests that they be withdrawn.

Applicant further traverses the § 103 rejections of claims 2, 15, 21-24, 26 and 34 because the Office Action improperly relies upon Official Notice without providing the requisite documentary evidence to support the Office Action's conclusion. *See, e.g.*, M.P.E.P. § 2144.03. The Office Action acknowledges that the cited references do not teach reporting errors that are based on corruption of a received information file that was not caused by a communication error, as in the claimed invention. The Office Action then asserts that viruses and virus identification programs are known in the art and therefore the skilled artisan would combine virus identification programs with the '287 reference to some unidentified and unexplained manner. The claimed invention, however, does not recite a virus identification program and, as such, it is unclear how the Office Action's assertions in any way provide correspondence to the claimed invention. The Office Action fails to cite to any reference that teaches reporting errors in received content that are not caused by communication errors, as in the claimed invention. Thus, the rejections necessarily fail and must be withdrawn. Should the Office Action maintain any rejection, Applicant respectfully requests that the Office Action provide the required documentary evidence to support any assertion that aspects of the claimed invention directed to reporting errors in received content that are not caused by communication errors are well known and that the Office Action provide the required motivation for why the skilled artisan would modify the '287 reference to include such aspects.

In view of the above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063.

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